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PATRICK E. DUFFY

IN THE UNITED STATES DISTRICT COURT DEPUTY CLERK
FOR THE DISTRICT OF MONTANA

## MISSOULA DIVISION

ERIK G. KNUDSON,	)	CV 06-55-M-DWM-CSO
Plaintiff,	)	
vs.	)	ORDER
MICHAEL J. ASTRUE, Commissioner of Social Security,	) ) )	
Defendant.	) ) )	

Plaintiff Knudson brings this action under 42 U.S.C. §§ 401 et seq., 1381 et seq. seeking judicial review of the Commissioner of Social Security's decision denying his application for disability insurance benefits and supplemental security income benefits. United States Magistrate Carolyn S. Ostby entered Findings and Recommendations in this matter on March 16, 2007. On March 23, 2007, Defendant notified the Court it would not object to Judge Ostby's Findings and Recommendation.

The Court, therefore, will review the Findings and Recommendation for clear error. *McDonnell Douglas Corp. v.*Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981).

Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v.

Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

It is Judge Ostby's recommendation that the Commissioner's motion for summary judgment be denied and this case be remanded to the Commissioner to evaluate whether Knudson's morbid obesity is medically equivalent to Listing 1.02A. She further recommended that judgment should be entered pursuant to sentence four of 42 U.S.C. § 405(g), reversing the Commissioner's decision.

I find no clear error in Judge Ostby's Findings and Recommendation (dkt #19) and adopt them in full: the motion for summary judgment (dkt #15) is DENIED;

IT IS FURTHER ORDERED that judgment shall be entered pursuant to sentence four of 42 U.S.C. § 405(g), REVERSING the Commissioner's decision; and

IT IS FURTHER ORDERED that the case is REMANDED for further administrative proceedings consistent with this order and Judge Ostby's Findings and Recommendation.

DATED this 6 day of April, 2007.

Donald W. Molloy, Chief Judge United States District Court